In the Supreme Court of the United States.

OCTOBER TERM, 1897.

CHARLES P. BARRETT, PLAINTIFF in error, v. THE UNITED STATES. } No. 53.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

CHARLES P. BARRETT, PLAINTIFF in error, v. THE UNITED STATES. } No. 175.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

There are two of these cases, the first, No. 53, in error to the circuit court of the United States for the

district of South Carolina, and the second, No. 175, in error to the district court of the United States for the western district of South Carolina.

At the regular term of the circuit court of the United States for the district of South Carolina, held at Columbia, in the county of Richland, in the State of South Carolina, in November, 1894, as shown by the record, Charles P. Barrett, the plaintiff in error, together with others, was indicted under section 5440 of the Revised Statutes of the United States for conspiracy to commit an offense against the United States, the object of the alleged conspiracy being, as charged, to violate section 5480 of the Revised Statutes of the United States, and the said Barrett, together with others, was, at the said term of the said court, indicted in another bill for a violation of section 5480 of the Revised Statutes of the United States. The trial in the first case was proceeded with in the circuit court at the said term and Barrett was convicted and sentenced, as shown by the record, and the case comes here by writ of error, and is numbered 53.

The other case was remitted by order of the circuit judge at the said November term, at Columbia, as shown by the record, to the district court for the western district of South Carolina, and was subsequently tried at Greenville, in the said district. Barrett was convicted and sentenced, and this case comes here by writ of error to the district court for the western district of South Carolina, and is numbered 175.

When 53 was called in the regular perusal of the docket, it was passed with the understanding that it

would be argued together with 175, the two cases involving substantially the same points.

The bill of indictment in each case charges the offense to have been committed in the county of Spartanburg, the indictment being, in No. 53, so far as is necessary to present for the consideration of the point involved, as follows:

> The United States of America, district of South Carolina, in the circuit court, to wit:
>
> At a stated term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia, within and for the district aforesaid, on the fourth Monday in November, in the year of our Lord one thousand eight hundred and ninety-four, the jurors of the United States of America within and for the district aforesaid, upon their oaths, respectively, do present that Charles P. Barrett (here are inserted names of others), together with divers other evil-disposed persons, to the jurors aforesaid unknown, late of the district aforesaid, on the first day of July, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg, in the State of South Carolina aforesaid, in the district aforesaid, and within the jurisdiction of this court, etc.

and in No. 175, after the formal parts as above, as follows:

> do present that Charles P. Barrett (&c.), late of the district aforesaid, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg County, in the State of South Carolina, in said district, and within the jurisdiction of this court, being persons of evil minds and dispositions, etc.,

and the indictments were found by the grand jury of the circuit court of the United States at Columbia, which is in the county of Richland, South Carolina. It is admitted that the county of Spartanburg is located in what is called the western district and that Richland County is located in what is called the eastern district as constituted by section 546 of the Revised Statutes of the United States.

The points suggested by the plaintiff in error in his brief as to the misjoinders in the indictment, the failure of the record to show the order for the *venire*, arraignment, and the presence of Barrett at the rendition of the verdict and when sentence was pronounced, are not under consideration. The plaintiff in error, in person and through his counsel, stipulated with the counsel for the United States that the only point to be presented in these cases should be the question of jurisdiction, and it was expressly agreed that the record to be printed should be curtailed, and only such part of the original record printed as should be necessary to present the question of jurisdiction. The printed record, therefore, presents the sole question of jurisdiction and no other, and this alone will be argued in behalf of the United States. There is no exception shown in the printed record upon which to base an assignment of error on any other point. As will be seen from the printed record in each case, four exceptions were taken in the court below in No. 53 and three in No. 175, and the bills of exception allowed and signed by the presiding judge have reference to the question of jurisdiction, and that alone.

In No. 53 the first exception is to the action of the court in refusing to sustain the challenge to the array of jurors on the ground that both the grand and petit jurors were drawn from both the eastern and western districts of South Carolina, when the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, which said county is located in the western district of South Carolina.

The second exception is to the order of the court overruling demurrer to indictment on the ground that the indictment charges the offense in Spartanburg County, which is in the western district, although the indictment was found in Richland County, which is in the eastern district.

The third exception is based upon the refusal of the court to sustain the plea to the jurisdiction of the court upon the ground that although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was sought to be held in the city of Columbia, in the county of Richland, in the eastern district of said State.

The fourth exception is to the refusal of the court to arrest judgment upon the grounds set forth in the motion for that purpose, namely: First, because the grand jurors who found the indictment and the petit jurors who found the verdict were drawn from both the eastern and western districts of South Carolina, when the offense is alleged to have been committed in the county of Spartanburg, in the western district of said State; second, because

the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the ——— day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina; third, because, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

In No. 175, which was tried in the district court at Greenville, the bill of exceptions is—

First, the refusal of the judge to sustain the demurrer to the indictment based on the ground that it appeared on the face of the indictment that, although the offense is charged to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of the said State, yet said indictment was found in the city of Columbia, in the county of Richland, in the State of South Carolina, the same being in the eastern district of said State, and at a time not authorized by law for the holding of any court of the United States for the western district of South Carolina.

Second, the refusal of the court to sustain the plea to the jurisdiction founded, first, "that the jurors of the grand jury by whom the indictment was found were

drawn, summoned, and impaneled from both the eastern and western districts of South Carolina instead of from the western district of said State alone;" second, "that the indictment was found in the circuit court of the United States for South Carolina, held in the city of Columbia, in the county of Richland, the same being in the eastern district of said State, and was remitted to the district court for the western district of said State;" and

Third, the refusal of the court to arrest the judgment after verdict upon a motion based upon the following grounds: First, that the grand jurors that found the indictment were drawn, summoned, and impaneled from both the eastern and western districts of South Carolina, when the crime is charged to have been committed in the county of Spartanburg, which is in the western district of said State; second, because, although the crime is charged to have been committed in the county of Spartanburg, in the State of South Carolina, the said county being in the western district of said State, yet the indictment was found in the county of Richland, in the eastern district of South Carolina, at a time not authorized by law for the holding of any court of the United States in the western district of South Carolina; and third, because the indictment was remitted, not to the district court for the eastern district of South Carolina, but to the district court for the western district of said State.

It will be seen from the preceding statement of the exceptions taken in the court below that although the question is presented in different forms, by challenge to the array of jurors, by demurrer to the indictment, by

plea to the jurisdiction, and motion in arrest of judgment, after all, the only question for consideration is that of the jurisdiction of the circuit court of the United States being held in one of the subdivisions or districts in South Carolina to try a criminal offense alleged to have been committed in the other subdivision or district of the said State.

POINTS AND ARGUMENT.

The statute relied upon by the plaintiff in error to sustain the positions taken in his several exceptions and assignments of error is section 546 of the Revised Statutes of the United States, which reads as follows:

> The State of South Carolina is divided into two districts, which shall be called the eastern and western districts of the *district* of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823, The eastern district includes the residue of said State.

By the second section of the act of September 24, 1789, which is an act, according to its caption, "To establish the judicial courts of the United States," the United States was divided into thirteen districts, one of which said districts consists of the State of South Carolina, to be called "South Carolina district." (See 1 U. S. Stats. L., chap. 20, p. 73.)

The third section of said act provides that there shall be a court called a district court in each of said districts

to consist of one judge who shall be called a district judge. Here it may be well to call the attention of the court to the fact that, although it is insisted by the plaintiff in error that there are two judicial districts in the State of South Carolina, there is but one district judge for the State, but one United States marshal, and but one attorney for the United States. The one district judge holds court in both the eastern and western districts of the State. The United States attorney, who is nominated, confirmed, and commissioned for the district of South Carolina, discharges the functions of his office throughout the State, and so does the United States marshal. So, in so far as the appointment of a district judge, a United States attorney, and a United States marshal is concerned, the State of South Carolina has never been treated otherwise than as constituting one judicial district. And it will be observed that in section 546, under which it is claimed that the State of South Carolina is divided into two judicial districts, so that the circuit court in order to have jurisdiction of an offense committed in one of the districts must sit within the limits of that particular district, the language is such as to preserve the original district of South Carolina, for, while the statute provides that the State of South Carolina is divided into two districts, it expressly enacts that the two districts thus made shall be called the "eastern and western districts of the *district* of South Carolina," not the eastern and western districts of the *State* of South Carolina. So in the very language of this statute itself the original judicial district of South Carolina is preserved.

In Notes on the Revised Statutes of the United States, Gould & Tucker, Title XIII, page 65, it is said (Secs. 543, 546):

> The States of North Carolina and South Carolina are here defined as each constituting one judicial district, although the act of 1802 (2 St., 162), ch. 31, § 7, designated the three divisions of North Carolina as "districts," and the act of 1823 (cited § 546) also so designated the divisions of South Carolina. 1 Com. D., 301, 307.

In *Young* v. *Merchants' Insurance Co.* (29 F. R., 237, 275) it was held by Simonton, Cir. J., that—

> All parts of the State of South Carolina are within the jurisdiction of this court. Its process runs all through the State. It does not know, in the sense which affects its jurisdiction, either the eastern or western district.

And whilst the point was not directly presented in the case of *Post* v. *The United States* (161 U. S., 583), yet the decision in that case tends to support the view that the State of South Carolina, notwithstanding the division made by section 546 of the Revised Statutes, is still, in so far as the circuit court of the United States is concerned, one judicial district, and has jurisdiction of criminal causes arising in any part of the State duly cognizable in the circuit court of the said district of South Carolina. The question involved in Post's case arose under the act of July 12, 1894, chapter 132, which provided—

> That all criminal proceedings instituted for the trial of offenses against the laws of the United States, arising in the district of Minnesota, shall be

> brought, had, and prosecuted in the division of said district in which such offenses were committed.

So it appears to have been necessary, in the opinion of Congress, in order to confine the jurisdiction to try a criminal offense to a particular division of the district of Minnesota, to pass a special act for that purpose. Otherwise, it seems to be a tenable proposition that the jurisdiction would have extended to the entire district of Minnesota. There has been no special act of Congress conferring exclusive jurisdiction of criminal offenses in South Carolina to the districts provided by section 546, and therefore, following upon the line of argument, it is insisted that this mere division by virtue of section 546, which left the original district of South Carolina intact so far as the jurisdiction of the circuit court is concerned, did not oust the jurisdiction of the circuit court to hear and determine a criminal offense committed in any part of the State of South Carolina, although the alleged offense may have been committed in one of the newly created districts and the court sit in the other.

The case of *Logan* v. *The United States* (144 U. S., 263) is also cited. It is held in that case that—

> An act of Congress requiring courts to be held at three places in a judicial district, and prosecutions for offenses committed in certain counties to be tried, and writs and recognizances to be returned, at each place, does not affect the power of the grand jury sitting at either place to present indictments for offenses committed anywhere within the district.

It is decided also in this case that the finding of the indictment is no part of the trial, and if it should be

held that the circuit court, sitting in the eastern district, had no jurisdiction to try the case against Barrett, still, under this decision, the jurisdiction existed for the grand jury to pass upon the bill of indictment, and in this view of it, the second case, No. 175, having been remitted after the finding of the indictment by the circuit court at Columbia, to be tried at Greenville, in the western district, in which the offense was alleged to have been committed, would fulfill all the requirements of the law. But this view of it is not acquiesced in by any means; it is only suggested for the sake of the argument.

The attention of the court is also directed to section 658, chapter 8, of the Revised Statutes of the United States, establishing the regular terms of the circuit courts of the United States. This section provides that—

> The regular terms of the circuit courts shall be held in each year at the times and places following; * * * in the *district* of *South Carolina*, at Charleston, on the first Monday in April, and at Columbia on the fourth Monday in November.

It will be observed that this statute does not provide for the sitting of the circuit court of the United States for the district of South Carolina at any place in the western district, the two places designated for the holding of the regular terms of the circuit court of the United States for the district of South Carolina being Charleston and Columbia, both of which are in the eastern district. So, if we take the construction which is attempted to be placed upon these statutes by the plaintiff in error, there would be no circuit court with the jurisdiction vested in it by law for the western district of South Carolina. In

other words, if the circuit court, in order to have jurisdiction of an offense committed in the western district, must be actually held at some place within the western district, then, under the provision of law for the holding of the regular terms of the circuit court in South Carolina, there would be no circuit-court jurisdiction for criminal offenses in the western district.

And the act of April 26, 1890, chapter 165, p. 718, Supplement Revised Statutes of the United States, vol. 1, second edition, provides—

> That there shall be four regular terms of the circuit court of the United States for the *district of South Carolina* in each year, as follows: * * * and in the city of Columbia on the fourth Monday in November.

It will be seen from these statutes that the State of South Carolina has never been considered or dealt with by Congress otherwise than as one district.

Chapter 7, Circuit Court Jurisdiction, section 629, Revised Statutes of the United States, provides that the circuit court shall have (subdivision 20)—

> Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

So the circuit court for the district of South Carolina had exclusive cognizance of the crimes for which Barrett was indicted and tried, except where it is otherwise provided by law. The provision otherwise by law in cases like these under consideration is in the statute conferring

jurisdiction upon the district courts in the several districts concurrent with that of the circuit court. This provision takes away the exclusive jurisdiction, but still leaves the circuit courts of the United States with jurisdiction concurrent with the district courts of all crimes and offenses cognizable under the authority of the United States. There is no law that divests the circuit court of the United States for the district of South Carolina of this jurisdiction thus conferred.

The Constitution of the United States, Article III, subdivision 3, provides that trials for crime shall be by jury and such trials shall be held in the *State* where said crimes shall have been committed. Barrett had the full benefit of that provision of the Constitution in this case. He was tried by jury and in the State of South Carolina, where the crime was alleged to have been committed.

But it is insisted further that, under Article VI of the amendments to the Constitution, the trial should have taken place in the *district* also in which the crime was committed. This last-mentioned article provides for trial in a criminal prosecution by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. Every requirement of this constitutional provision was fulfilled in Barrett's case. There is no intimation that the jury was not impartial. The record shows that it was drawn from the State of South Carolina, the State in which the crime was alleged to have been committed, and that the trial was had in the district of South Carolina, which is composed of the State of South Carolina, which had been previously ascertained by law.

The plaintiff in error, in the first point in his brief of argument, says that—

> Both indictments were found at a circuit court for the eastern district of South Carolina, which convened at Columbia, in the county of Richland, in the State of South Carolina, on the fourth Monday in November, 1894.

This is a misstatement of the fact, as fully appears by the record. The term of court at which the bills of indictment were found was not a circuit court for the eastern district of South Carolina, but *the circuit court of the United States for the district of South Carolina*. Every proceeding in No. 53 is recorded as in *the circuit court of the United States for the district of South Carolina*, and every proceeding in No. 175 is similarly recorded until it was remitted to the district court for the western district by order of the circuit judge. There is nowhere in the proceedings in either case any recognition of two districts in South Carolina, except the order remitting No. 175 to the district court of the western district. The doctrine in *Toland* v. *Sprague*, 12 Pet. (U. S.), cited in brief of plaintiff in error, sustains the position contended for on the part of the United States. In that case it is in substance decided that the jurisdiction of a circuit court of the United States is coextensive with the limits of the district in which it is held, and the same principle is declared in the case of *Railroad Company* v. *Railroad Company*, 15 How. (U. S.), also cited by the plaintiff in error.

It seems to be a necessary conclusion that it was not intended by Congress by the provisions of section 546

of the Revised Statutes to destroy the existence of the original judicial district of South Carolina, and that the said section was intended to establish the districts referred to simply as subdivisions of the district of South Carolina, leaving the said district with the jurisdiction of the circuit court of the United States therein unimpaired.

There are certain conditions relating to this question of which it is assumed the court here will take judicial notice, such as the fact that a district judge is appointed and commissioned for the district of South Carolina; a United States attorney is appointed and commissioned for the district of South Carolina, and a United States marshal is appointed and commissioned for the same district. The district judge holds court in all parts of the State, and the functions of the district attorney and marshal in the discharge of their official duty extend throughout the State of South Carolina as one judicial district. The process of the circuit court, such as writs of subpœna, summonses, citations, and monitions in civil actions, and capiases, subpœnas for witnesses, and other process in criminal actions, together with orders for venires and for jurors, are operative, when regularly issued, in all parts of the State of South Carolina as one judicial district.

RECAPITULATION.

First. The original act establishing thirteen judicial districts in the United States constituted one district in the State of South Carolina.

Second. Section 546 does not destroy the original district as thus constituted, but expressly recognizes such

district, and has the effect only to subdivide the same into divisions and not into separate judicial districts, at least to the extent of destroying the original district and the jurisdiction of the circuit courts of the United States therein.

Third. The acts of Congress before referred to, in regard to the terms of the circuit court, expressly recognize the State of South Carolina as one judicial district.

Fourth. Authority to appoint and commission a United States judge, a United States attorney, and a United States marshal for the district of South Carolina is a further recognition of the existence of said district.

Fifth. The jurisdiction of the circuit court of the United States for the district of South Carolina to issue and command the service of process in all parts of the State of South Carolina has, so far as can be ascertained, never been disputed, but, on the other hand, has uniformly been accepted as authorized by law.

JAS. E. BOYD,
Assistant Attorney-General.

11603——2